

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 03-1306-WEB
)	
\$61,980.00 IN UNITED STATES)	
CURRENCY, More or less,)	
)	
Defendant.)	
)	
v.)	
)	
LaSHONE OWENS,)	
)	
Claimant.)	
)	
)	
_____)	

Memorandum and Order

This matter is before the court on the United States' Motion to Strike the Claim of LaShone Owens for Failure to Comply with the Court's Discovery Order. Doc. 28.

I. Background.

The United States filed this action for forfeiture and condemnation of \$61,980.00 in United States currency pursuant to 21 U.S.C. § 881(a)(6). The court has jurisdiction of the action under 28 U.S.C. §§ 1345 and 1355. The complaint alleges that the defendant currency was seized on November 17, 2002, in Geary County, Kansas, and that it was furnished or intended to be furnished in exchange for a controlled substance, or it constitutes proceeds traceable to such an exchange, or was used or intended to be used

to facilitate one or more violations of 21 U.S.C. § 841 et seq., such that it is subject to forfeiture to the United States under § 881(a)(6). Doc. 1. An affidavit attached to the complaint shows probable cause to believe the property is subject to forfeiture.

On December 15, 2003, attorney Roger Falk entered an appearance and filed a claim on behalf of Mr. LaShone Owens alleging that Owens was the owner of the property. Docs. 6, 7. Mr. Falk also filed an answer to the complaint alleging that the action should be dismissed because of unreasonable delay between the seizure of the property and the bringing of the forfeiture action, and also alleging a counterclaim against the United States for foregone interest on the defendant currency. Doc. 8.

On February 11, 2004, Magistrate Judge Donald Bostwick entered a scheduling order that included a fact discovery deadline of May 21, 2004, and a final Pretrial Conference date of July 13, 2004. Doc. 12. The United States served interrogatories and requests for documents upon claimant Owens in March of 2004. Doc. 14. On June 25, 2004, Magistrate Bostwick granted a motion by the United States to compel claimant to answer plaintiff's discovery requests.

On June 29, 2004, Mr. Falk filed notice that claimant had responded to the discovery requests. On July 2, 2004, however, Mr. Falk moved to withdraw from the case, alleging that he was having severe communications problems with claimant, and stating that his only contact with claimant was currently through claimant's out-of-state counsel, Scott Richardson, who had not entered an appearance in the case. Mr. Falk noted that claimant's responses to the discovery requests had clearly been inadequate, and stated that he had received no explanation for the shortcoming.

On July 13, 2004, the Magistrate held a status conference and vacated his prior scheduling order. The United States filed a second Motion to Compel on July 28, 2004, seeking an order directing the

claimant to identify and produce the requested documents and to fully and completely answer the United States' interrogatories. Doc. 22. On October 29, 2004, the Magistrate granted the motion to compel and directed claimant to provide full discovery responses by November 12, 2004. Doc. 26. The Magistrate noted that claimant's failure to provide discovery and abide by the court's scheduling order had effectively thwarted attempts to move the case along. The Magistrate also granted Mr. Falk's motion to withdraw, but required him to provide copies of the order to claimant and his out-of-state counsel. The Magistrate also noted in his order that a failure by claimant to comply with the order could result in the imposition of sanctions, including the striking of his pleadings, the dismissal of his claim, and the entry of default judgment against him.

On November 16, 2004, the United States moved to strike claimant's claim for failure to comply with the court's discovery order. Doc. 28. The motion alleged that claimant had willfully failed to comply with the court's November 12th deadline for providing discovery. On December 2, 2004, the Magistrate held a telephonic status conference that apparently included claimant's out-of-state counsel, Mr. Richardson. As a result of the conference, the United States agreed to extend the deadline to December 20, 2004, for claimant to file a response to the motion to strike. The extended period for claimant to respond to the motion to strike has now expired. Plaintiff still has not provided the discovery ordered by the Magistrate.

II. Discussion.

Rule 37(b)(2)(c) authorizes the district court to strike pleadings or render a default judgment against a party as a sanction for failure to comply with a discovery order. Fed.R.Civ.P. 37(b)(2). Because this constitutes an extreme sanction, the court ordinarily must consider a number of factors before imposing it,

including: (1) the degree of actual prejudice to the other party, (2) the amount of interference with the judicial process, (3) the culpability of the litigant, (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance, and (5) the efficacy of lesser sanctions. *Jones v. Thompson*, 996 F.2d 261, 264 (10th Cir.1993). In the case of pro se litigants, courts use extra care when deciding whether to order dismissal as a sanction; nevertheless, pro se litigants are subject to the same procedural rules as everyone else. *Creative Gifts, Inc. v. UFO*, 235 F.3d 540, 549 (10th Cir. 2000).

This case has essentially ground to a halt due to claimant's failure to comply with the court's discovery order. The United States has suffered prejudice because it is unable to prosecute the claim without the requested discovery. Claimant's repeated refusals to provide appropriate discovery has rendered meaningless the Magistrate's prior orders and his attempts to provide a schedule for orderly disposition of the litigation. Claimant's inadequate discovery response in June of 2004, which came after the court had already granted a motion compelling claimant to provide discovery, is an indication of bad faith on claimant's part, and the court finds that claimant's failure to comply with the Magistrate's October 29 Order was willful. Claimant has been given more than ample time to comply with the court's order and, if he so desires, to obtain new counsel. The court further finds that lesser sanctions under these circumstances would not likely be effective in bringing about compliance with the court's orders. Claimant was warned previously by the Magistrate that failure to comply with his order could result in claimant's claim being stricken. The court concludes that such a sanction is warranted here. *Cf. United States v. \$49,000 Currency*, 330 F.3d 371, 378-79 (5th Cir. 2003) (default judgment was appropriate sanction for claimants' failure to comply with court's discovery order and deadlines).

III. Conclusion.

The United States' Motion to Strike the Claim of LaShone Owens for Failure to Comply with the Court's Discovery Order (Doc. 28) is hereby GRANTED. The court orders that the claim and answer of LaShone Owens is hereby STRICKEN as a sanction for his willful failure to comply with the Court's October 29, 2004 order.

IT IS SO ORDERED this 30th Day of December, 2004, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown

U.S. Senior District Judge